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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/817,419 | 03/26/2001 | Yong-Cheng Shi | 1908 | 8490 |

7590 12/06/2002

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EXAMINER

TRAN LIEN, THUY

| ART UNIT | PAPER NUMBER |
|----------|--------------|
| 1761 | 6 |

DATE MAILED: 12/06/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

| | |
|--------------------------------------|----------------------------------|
| Application No. 09/817,419 | Applicant(s) Shi et al |
| Examiner Lien Tran | Art Unit 1761 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on Sept. 23, 2002

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

4) Claim(s) 1 and 3-41 is/are pending in the application.

4a) Of the above, claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1 and 3-41 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some* c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) The translation of the foreign language provisional application has been received.

15) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) Notice of References Cited (PTO-892) 4) Interview Summary (PTO-413) Paper No(s). _____

2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) Notice of Informal Patent Application (PTO-152)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) Other: _____

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1. Claims 1,4,5,8,10, 11-15 are rejected under 35 U.S.C. 102(b) as being anticipated by

Whitney et al for the same reason set forth in paragraph 3 of the previous office action.

2. Claims 3,6-7,9,16-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Whitney et al in view of Fergason et al for the same reason set forth in paragraph 6 of the

previous office action.

3. In the response filed Sept. 23, 2002, applicant argues Whitney does not anticipate the cited claims as amended because Whitney states that his process has the advantageous property of gelatinization; this is in contrast to claim 1 which is limited to starch in which the heat-treated grain is not completely destroyed and thus is not fully gelatinized. This argument is not persuasive.

The disclosure that the process has the advantageous property of gelatinization does not in any way indicate fully gelatinization; there is varying degree of gelatinization. It is not clear what range of gelatinization the claimed language of "not completely destroyed" covers; this language can be interpreted to mean the starch is substantially gelatinized but not completely gelatinized. Whitney discloses on column 3 lines 1-2 the grains are heated until they are substantially fully cooked; thus, the grains are not completely fully cooked.

With respect to the 103 rejection, applicant argues the amended claims differ from those of Whitney in that the starch is not gelatinized. This argument is not commensurate in scope with the claims. The claims do not recite that the starch is not gelatinized.

4. Applicant's arguments filed Sept. 23, 2003 have been fully considered but they are not persuasive.

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5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien Tran whose telephone number is 703-308-1868. The examiner can normally be reached on Wed-Fri. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

November 22, 2002

Lien Tran
LIEN TRAN
PRIMARY EXAMINER
Group 1700